IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1870 OF 2003

WITH

NOTICE OF MOTION NO.3660 OF 2003

IN

SUIT NO.1917 OF 2003

Pramila B. Dekhtawala nee Pramila K. Rokadia ... Plaintiff

v/s

Navinchandra K. Rokadia and ors. ... Defendants

And

Indian Bank ... Applicants

Mr Jain i/b M/s Legal Juris for Plaintiff.

Mr Yogesh Deshpande for Defendant No.1.

Mr Rajesh Singh for Defendant No.2.

Mr Ajay Seth for Defendant No.3.

Mr Sangram Yadav i/b Mr C. Naik for Defendant Nos.4 to 7.

Ms Mohana Nair i/b M/s Mohana Nair and Associates for Applicants in N/M No.3660 of 2003.

CORAM : D.K.DESHMUKH J.

DATE : 13TH AUGUST 2004

P.C.: -

1. Notice of motion No.1870 of 2003 is taken out by the plaintiff. The plaintiff has filed this suit challenging the validity of the memorandum of understanding entered into between defendant Nos.1, 2 and 3 in relation to certain immovable properties. the case of the plaintiff is that the properties are left behind by her mother, she has share in the properties and that the defendant Nos.1, 2 and 3 who are brothers of the plaintiff cannot appropriate the properties to themselves. The plaintiff has sought relief of appointment of Court Receiver as also the relief of temporary injunction on the allegation that the defendant Nos.1, 2 and 3 are likely to transfer the properties. According to the plaintiff, she is occupying one of the properties alongwith the defendant No.3. None of the defendants have filed any reply. Therefore, in the absence of any denial of the averments made in the plaint and the affidavit filed in support of the motion and assuming that the plaintiff has share in

the properties, in my opinion, it is not necessary to appoint Court Receiver on the -properties. The interest of the plaintiff can be safeguarded by restraining the defendant Nos.1, 2 and 3 from selling the properties and also restraining them from disturbing joint possession of the plaintiff of one of the flats with the defendant No.3. It appears from prayer clause (b) of the plaint that the real intention of the plaintiff is to restrain the Bank from proceeding against the properties of the defendant Nos.1, 2 and 3 against whom the Bank has recovery certificates. I also find substance in the contention of the Indian Bank that this plaintiff has been put up by the defendant Nos.1, 2 and 3 to frustrate the sale of the properties by the Bank. Taking overall view of the matter therefore, following order would meet the ends of justice.

2. The defendant Nos.1, 2 and 3 are restrained by a temporary order of injunction from disturbing joint possession of the plaintiff of one of the flats being Flat No.74, Rajat Apartment, Malabar Hill, Mumbai. They are also restrained from disposing of the properties described in Exh.'A' of the plaint during the pendency of the suit. It is further clarified that this order will not come in the way of the Bank executing its recovery certificates against the defendants. The Bank

is free to sell the properties in execution of the decree passed by the Debt Recovery Tribunal. So far as notice of motion No.3660 of 2003 is concerned, the ad-interim order granted by this Court appointing Court Receiver in the said motion is vacated. Both the notices of motion are disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.